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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,279	03/26/2004	Alexander Sloat	00995-P0229B	2153
24126	7590	03/30/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			NORDMEYER, PATRICIA L	
986 BEDFORD STREET			ART UNIT	PAPER NUMBER
STAMFORD, CT 06905-5619			1772	

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,279	<b>Applicant(s)</b> SLOOT, ALEXANDER	
	<b>Examiner</b> Patricia L. Nordmeyer	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Repeated Rejection***

1. The 35 U.S.C. 103 rejection of claims 1 – 10 over Stahl in view of Slood and Amburgey in the paper dated September 30, 2004 is repeated for reasons previously of record.

### ***Response to Arguments***

2. Applicant's arguments filed January 3, 2005 with regard to the 35 U.S.C. 103 rejection have been fully considered but they are not persuasive.

In response to Applicant's argument that the thermoplastic layer (Figure 5, #15) is an upper layer instead of intermediate fixation system which attaches a piece of material, the Examiner agrees that the thermoplastic layer (Figure 5, #15) is not an intermediate fixation system, but layer #16 in Figure 3 is an adhesive layer, or intermediate fixation system, which adheres an upper thermoplastic layer, #14, to a lower thermoplastic layer, #18. The reference to layer #15 in Figure 5 is believed to be a typographical error on the part of the previous Examiner as there is no mention in the specification to the thermoplastic layer #15 with regard to Figure 5.

In response to Applicant's argument that the Stahl reference does not teach or suggest in any way a piece of material attached to the upper surface of the upper thermoplastic layer, Stahl does fail to teach or suggest a piece of material attached to the upper surface of the upper thermoplastic layer; however, it believed this is based off the typographical error on the part of

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the previous Examiner as Stahl clearly states that the emblem contains a fabric layer that is embossed with indentations in the desired pattern (Column 6, lines 1 – 6). Therefore, it would be obvious to one of ordinary skill in the art that thermoplastic layers #14 and #18 are also fabric layers in a different embodiment of the emblem.

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Applicant states that the Examiner has failed to cite motivation for one skilled in the art to arrive at the very precise structured required by all the claims of the present invention. All of the previously applied prior art is directed towards the method of attaching appliqués or emblems to a surface of a garment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified Stahl with an upper layer of material to a base layer of material to provide an aesthetically pleasing frame about the decorative fabric layer, thereby forming an aesthetically pleasing display on a garment.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

  
pln

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

3/28/05